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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

11 || OMAR MARTIN,

Plaintiff,

13

14 KNIGHT, *et al.*,

Defendants.

Case No. 1:22-cv-01582-KES-BAM (PC)

**FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF
ACTION, WITHOUT PREJUDICE, FOR
FAILURE TO PROSECUTE AND FAILURE
TO OBEY COURT ORDER**

(ECF No. 43)

FOURTEEN (14) DAY DEADLINE

19 Plaintiff Omar Martin (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma
pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on
20 Plaintiff’s first amended complaint against Defendant Knight (“Defendant”) for deliberate
21 indifference in violation of the Eighth Amendment for the incident on April 10, 2020.
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23 || I. Background

24 On January 26, 2024, Defendant filed a motion for summary judgment on the grounds that
25 Plaintiff failed to exhaust his administrative remedies prior to filing suit. (ECF No. 40.) In the
26 Court's second information order, Plaintiff was provided with notice of the requirements for
27 opposing a motion for summary judgment. *Woods v. Carey*, 684 F.3d 934 (9th Cir. 2012); *Rand*
28 *v. Rowland*, 154 F.3d 952, 957 (9th Cir. 1988); *Klingele v. Eikenberry*, 849 F.2d 409, 411–12 (9th

1 Cir. 1988). (ECF No. 41.) Following service of that order, Plaintiff's opposition was due on or
2 before February 22, 2024. (ECF No. 41.)

3 On February 27, 2024, the Court granted in part Plaintiff's motion for extension of time to
4 file his opposition to Defendant's motion for summary judgment. (ECF No. 43.) Plaintiff was
5 permitted an additional thirty days to file his opposition, and was warned that failure to file an
6 opposition in compliance with the Court's order would result in dismissal of this action, without
7 prejudice, for failure to prosecute. (*Id.*) Plaintiff's opposition was therefore due on or before
8 April 1, 2024.

9 Plaintiff has failed to submit any response to Defendant's motion for summary judgment
10 and has not otherwise communicated with the Court.

11 **II. Discussion**

12 Local Rule 110 provides that “[f]ailure . . . of a party to comply with these Rules or with
13 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . .
14 within the inherent power of the Court.” District courts have the inherent power to control their
15 dockets and “[i]n the exercise of that power they may impose sanctions including, where
16 appropriate, . . . dismissal.” *Thompson v. Hous. Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A
17 court may dismiss an action, with prejudice, based on a party's failure to prosecute an action,
18 failure to obey a court order, or failure to comply with local rules. *See, e.g., Ghazali v. Moran*, 46
19 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*,
20 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring
21 amendment of complaint); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130–33 (9th Cir. 1987)
22 (dismissal for failure to comply with court order).

23 In determining whether to dismiss an action, the Court must consider several factors:
24 (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its
25 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
26 cases on their merits; and (5) the availability of less drastic sanctions. *Henderson v. Duncan*, 779
27 F.2d 1421, 1423 (9th Cir. 1986); *Carey v. King*, 856 F.2d 1439 (9th Cir. 1988).

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1 Here, Plaintiff's response or opposition to Defendant's motion for summary judgment is
 2 overdue. Plaintiff was warned that his failure to comply with the Court's order would result in
 3 dismissal of this action, without prejudice, for failure to prosecute. Plaintiff has failed to comply.

4 Plaintiff is obligated to comply with the Local Rules and was informed by Defendant and
 5 the Court of the need to oppose a motion for summary judgment. Despite Plaintiff's duty to
 6 comply with all applicable rules and Defendant's notice, Plaintiff did not file an opposition. The
 7 Court cannot effectively manage its docket if a party ceases litigating the case. Thus, both the
 8 first and second factors weigh in favor of dismissal of this action.

9 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, because
 10 a presumption of injury arises from the occurrence of unreasonable delay in prosecuting an
 11 action. *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). Because public policy favors
 12 disposition on the merits, the fourth factor usually weighs against dismissal. *Pagtalunan v.*
 13 *Galaza*, 291 F.3d 639, 643 (9th Cir. 2002). However, "this factor lends little support to a party
 14 whose responsibility is to move a case toward disposition on the merits but whose conduct
 15 impedes progress in that direction," which is the case here. *In re Phenylpropanolamine (PPA)*
 16 *Prods. Liab. Litig.*, 460 F.3d 1217, 1228 (9th Cir. 2006).

17 Finally, the Court's warning to a party that failure to obey the Court's order will result in
 18 dismissal satisfies the "considerations of the alternatives requirement." *Ferdik*, 963 F.2d at 1262;
 19 *Malone*, 833 at 132–33; *Henderson*, 779 F.2d at 1424. The Court's February 27, 2024 order
 20 granting Plaintiff's motion for extension of time expressly warned Plaintiff that if he failed to
 21 comply with that order, this matter would be dismissed, without prejudice, for failure to
 22 prosecute. (ECF No. 43, p. 2.) Thus, Plaintiff had adequate warning that dismissal of this action
 23 could result from his noncompliance. At this stage in the proceedings there is little available to
 24 the Court which would constitute a satisfactory lesser sanction while protecting the Court from
 25 further unnecessary expenditure of its scarce resources. Plaintiff is proceeding *in forma pauperis*
 26 in this action, making monetary sanctions of little use, and the preclusion of evidence or witnesses
 27 is likely to have no effect given that Plaintiff has ceased litigating this case.

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In summary, Plaintiff is no longer prosecuting this action, and the Court cannot afford to expend resources resolving an unopposed dispositive motion in a case which Plaintiff is no longer prosecuting.

III. Recommendation

Accordingly, the Court finds that dismissal is the appropriate sanction and HEREBY RECOMMENDS that this action be dismissed, with prejudice, for failure to prosecute and for failure to obey a court order.

These Findings and Recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen (14) days** after being served with these Findings and Recommendations, the parties may file written objections with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The parties are advised that failure to file objections within the specified time may result in the waiver of the “right to challenge the magistrate’s factual findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: **April 15, 2024**

/s/ *Barbara A. McAuliffe*
UNITED STATES MAGISTRATE JUDGE